

IN THE COURT OF APPEALS OF IOWA

No. 0-722 / 10-1345
Filed October 6, 2010

**IN THE INTEREST OF D.L.-F. and P.L.,
MINOR CHILDREN,**

D.K.L., Mother,
Appellant.

Appeal from the Iowa District Court for Black Hawk County, Kellyann M. Lekar, Judge.

A mother appeals from the district court's order terminating her parental rights to two children. **AFFIRMED.**

Kelly J. Smith, Waterloo, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Thomas J. Ferguson, County Attorney, Steven J. Halbach, Assistant County Attorney, for appellee State.

Mark Milder, Waverly, for father.

Michael Bandy, Waterloo, attorney and guardian ad litem for children.

Considered by Sackett, C.J., and Potterfield and Tabor, JJ.

POTTERFIELD, J.

Deziaray appeals¹ from the termination of her parental rights to her two children, contending the juvenile court should have granted her additional time. Both children are under the age of three, have been adjudicated children in need of assistance, have been out of their mother's custody for at least six of the last twelve months, and cannot be returned to her at the present time. Upon our de novo review, we are not convinced that an additional six months could result in reunification and we therefore affirm.

Deziaray was herself a child in need of assistance (CINA) and she and her mother have been involved with the Department of Human Services (DHS) for most of Deziaray's life. Deziaray was fourteen when she gave birth to D.L.-F. in November 2006. She has a history of assaultive behavior, and again came to DHS's attention in December 2006, when she was charged with domestic assault upon D.L.-F.'s father, Orlando. Deziaray threw rubbing alcohol at Orlando and some of it landed on D.L.-F. Services were offered to the family on a voluntary basis.

Deziaray was again adjudicated CINA in 2008 at the age of sixteen as a result of concerns about conditions in her mother's home. She was placed in foster care for a time with her child, lived with her grandmother for a time, and eventually moved back to her mother's home. The DHS case was closed in October 2008, due to "maximum benefits" having been obtained and with a recommendation that Deziaray be placed in group care.

¹ The father has not appealed the termination of his parental rights.

In February 2009, Deziaray gave birth to P.L. In March 2009, Deziaray was arrested and charged with child endangerment, possession of marijuana, public intoxication, and disorderly conduct after she was found chasing her boyfriend around a hotel parking lot and the children were found in a hotel room that had sustained substantial damage: the children were sitting on the bed in the midst of shards of glass from a broken mirror. The children were removed from Deziaray's custody and placed in foster care.²

On June 16, 2009, D.L.-F. and P.L. were adjudicated CINA and remained in foster care. Deziaray was to participate in alcohol treatment and any other treatment recommended after undergoing a substance abuse evaluation.

On July 17, 2009, Deziaray had a substance abuse evaluation, which resulted in a recommendation of in-patient treatment. One treatment option that would have allowed her children to be placed with her fell through, however, when on July 19, 2009, Deziaray was charged again with public intoxication and disorderly conduct. Deziaray was released from jail on July 31, 2009.

In August, Deziaray began treatment at Area Substance Abuse Council, running away twice, but returning voluntarily. She transferred to Clear View Recovery Center in October 2009, where her children were able to join her a week later. However, P.L. was ill and Deziaray did not follow through with P.L.'s needed treatment, placing P.L. at risk. The children were returned to foster care.

² The children were originally placed with Deziaray's grandmother (the children's great-grandmother). They were removed in May 2009 due to safety concerns. Those concerns were corrected and the children again placed with their great-grandmother. However, in July 2009, the children were placed in foster care when the great-grandmother tested positive for marijuana and refused to provide additional UAs or cooperate with DHS services.

In November 2009, Deziaray underwent a mental health assessment and received a dual diagnosis of major depressive disorder and substance abuse. Medications were prescribed for her.

In a report dated January 4, 2010, the social worker assigned to this case described the situation in part as follows:

[D.L.-F.] has been involved with DHS services all but six months of his life due to his mother's violent actions and continued substance abuse. [P.L.] has been under DHS supervision for all but 7 weeks of her life for the same reasons. After a total of 31 months of DHS service, Deziaray and Orlando are just now beginning to address the issues that place the children's safety at risk. For the past nine months, the children have moved into two different foster homes, into relative care twice and with Deziaray for two short periods. These children are suffering from their lack of permanency and need a stable place to call home. Delaying permanency at this point will only prolong the amount of time the children have to wait for stability. They are already showing signs of detachment and behavioral concerns due to the amount of time they've waited thus far.

In a January 2010 dispositional review order, the court noted the State's intention to file a petition for termination of parental rights and Deziaray's requested deferment of permanency. The court set the issue of permanency for hearing. Shortly after the court hearing, Deziaray left Clear View against the advice of her counselor and staff.

On February 17, 2010, the children were moved to a new pre-adoptive foster home with the children's biological great aunt. Deziaray had not met her aunt prior to placement.

A termination hearing was held on May 19, 2010. On August 2, 2010, the juvenile court filed an order terminating parental rights pursuant to Iowa Code section 232.116(1)(h) and (I) (2009).

Deziaray now appeals. She does not challenge that statutory grounds exist for termination of her parental rights. See *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010) (noting first question in analytical framework is whether statutory grounds under Iowa Code section 232.116(1) exist). She does argue that because the children are currently placed with a relative, additional time afforded to her will not cause “undue distress to the children.” See Iowa Code § 232.116(3)(a) (stating court need not terminate if the court finds that “relative has legal custody of the child”). We disagree that additional time will not harm the children.

Pursuant to Iowa Code section 232.102(7), if the court orders the transfer of the custody of children to DHS, DHS “shall submit a case permanency plan to the court and shall make every reasonable effort to return the child to the child’s home *as quickly as possible consistent with the best interests of the child.*” (Emphasis added.) The district court wrote:

At the time of the termination trial, the mother had gained but then lost employment. She remained living with her mother which is not a home suitable for placement of the children. She had not participated in drug testing for three months. The mother admitted that she left inpatient treatment on impulse and that decision was not in the best interests of her children. She was discharged from outpatient treatment in March 2010 for failing to attend. This Court has no confidence that she is maintaining drug and alcohol free in light of her failed treatment and failure to participate in UAs. She has made no further attempts to seek drug treatment. The mother has made no efforts to place herself in a position to parent her children. The mother has been invited to come to the foster home (which is the home of her paternal aunt) to visit with the children and to participate in family activities but declined to do so.

There are considerable concerns about the mother’s parenting, substance abuse, mental health, relationships involving domestic violence, anger management, and ability to provide a safe home to the children. These concerns have been present since the removal in May 2009. Concerns about this family have been raised

since December 2006, when [D.L.-F.] was one month old. DHS and the juvenile court have had prior involvement with the family. . . . Except for when she was in treatment, the mother has been largely uncooperative with drug testing. The mother's substance abuse treatment has been unsuccessful. This Court has no reason to assume that she remains at anything other than a very high risk for relapse. . . .

. . . . The mother has failed to provide a safe home, cannot safely parent the children, and has failed to address both substance abuse and mental health issues. Because of the children's need for permanency, and the parents' history of instability, inability to provide safe and stable home environment, history of lack of supervision and poor parenting skills, mental health issues and substance issues, the Court finds that it is in the best interest of the children to allow the children to have a safe and stable and permanent home and that further delay is not in the children's best interests.

Like the district court, we conclude delay is unwarranted. A parent does not have an unlimited amount of time to correct deficiencies. *In re H.L.B.R.*, 567 N.W.2d 675, 677 (Iowa Ct. App. 1997). Patience with parents can soon translate into intolerable hardship for a child. *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997). "Once the limitation period lapses, termination proceedings must be viewed with a sense of urgency." *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000). We agree that Deziaray remains at a high risk for relapse. At the time of the termination hearing, she was not in substance abuse treatment, she was not participating in drug testing, and she had been to only one mental health intake appointment. She offered lack of transportation as an excuse. She testified that given an additional six months, "if I can't find a ride, [I can] go ahead and get me a bus ticket." Yet there is nothing in this record to suggest that transportation assistance had not been offered. We agree that an extension of time for reunification is not supported by evidence.

Upon our de novo review, there is clear and convincing evidence to support termination under Iowa Code section 232.116(1)(h) (child three or younger, adjudicated CINA, removed from physical custody of parent at least six of last twelve months, cannot be returned to parent at present time). These children are in need of and deserve permanency. P.L. is exhibiting attachment issues, an inability to bond with adults. The children have been moved numerous times and are now in a pre-adoptive placement. The district court concluded, and we agree, that termination was in the children's best interests and placement in an adoptive home will best meet the children's physical, mental, and emotional condition and needs of the children. See Iowa Code § 232.116(2).

We affirm the decision of the juvenile court.

AFFIRMED.